

Security Processing Requirements for On-Site Service Contracts

Section 1 – Overview

1.1 Purpose

This chapter establishes procedures for adhering to security processing requirements for contractors performing services on or within a Department of Commerce facility, as required by the U.S. Department of Commerce Personnel Security Manual.

1.2 Applicability

This policy is applicable to Department of Commerce solicitations and contracts that meet ALL of the following criteria:

- ! Services
- ! Non-classified nature
- ! Performed on or within government facilities

The procedures contained herein implement the requirements of the U.S. Department of Commerce Personnel Security Manual.

1.3 Background

It is an inherent Government function under the “housekeeping” principles authorized by the U.S. Congress for a Government agency to protect its facilities and their occupants from harm and its information from improper disclosure. Therefore, non-employees who are granted continuing and official access to Government buildings and facilities shall be subject to specific security screening requirements similar to those imposed upon employees. These requirements are set forth in the U.S. Department of Commerce Personnel Security Manual.

Section 2 – Policy

2.1 Designation of Risk

All requirements that meet the criteria in Section I above are required to be classified by risk. Each requirement shall include a risk level designation of:

- ! High Risk
- ! Moderate Risk, OR
- ! Low Risk

The risk level designation shall be made by the program office representative (typically the requisitioner/proposed COTR), in conjunction with operating unit management, cognizant security office, and the procurement office representative. The parties shall review the work to be performed and assign the highest risk designation in accordance with the criteria cited in **Section 203** of the Department of Commerce Personnel Security Manual (Attachment 1).

Definitions and examples of work considered “high risk”, “moderate risk”, and “low risk” are delineated in the DoC Personnel Security Manual in **Section 203(a)**. The risk level is determined by evaluating the

sensitivity of the work being planned; the sensitivity of the facility upon or in which the work is to be performed; whether the contracted activities are to be performed during or outside of normal work hours; and the extent of cleared Government escort that will be both necessary and available to the contract employees present in the facility.

The risk level, in turn, determines the security/suitability requirements for the contract personnel who will perform the work. The costs for conducting the applicable security/suitability checks are to be absorbed by the program office sponsoring the procurement.

2.2 Background Investigation Requirements by Risk Category and Duration

A. U.S. Citizens

Risk Level	Duration	Background Investigation Required*
Low or Moderate Risk	Less than 180 days	None
Low or Moderate Risk	180 to 364 days	SAC (Special Agreement Check)
Low or Moderate Risk	365 or more days	NACI (National Agency Check Plus Written Inquiries)
High Risk	All	BI (Background Investigation)

*See DoC Personnel Security Manual for definitions

B. Non-U.S. Citizens

In accordance with DoC Security Office policy "PROCESSING FOREIGN NATIONALS," all non-U.S. citizens (foreign nationals) who will be working on-site are required to have a Special Agreement Check (SAC) suitability assessment regardless of anticipated length of stay.

2.3 Suitability Updates

Contract employees originally estimated to be on-site less than one year who will continue working beyond the one year period will require a NACI background investigation in order to continue working on-site. The COTR/program office shall contact the cognizant security office if the duration of the contract will be extended beyond a one-year period.

All employees on high risk contracts require a background investigation update every five (5) years.

Section 3 -- Contract Requirements and Procedures

3.1 Solicitation/Contract Language

All solicitations/contracts that meet the criteria in Section I above, are required to contain language regarding the risk designation and the associated security requirements. Attachments 2 and 3 contain recommended language for both low/moderate risk and high risk contracts. It is recommended that the COTR, operating

unit management representative and cognizant security officer work with the Contracting Officer/Contract Specialist to tailor the provision to the particular situation.

3.2 Requesting Background Investigations for Onsite Workers

Once an award is made, the contractor shall submit the specified information and forms for each proposed employee, with written releases of the Government from liability, to the COTR. The COTR shall, in turn, forward the information to the operating unit's security officer for further processing. Based on the specifics of the situation, the security officer will advise whether work can commence prior to the suitability determination. There are differences in the timing of form submittal requirements as well as differences in whether a proposed contract employee can begin work prior to being determined suitable. Specific information on the timing of form submittals and work commencement can be found in *sections 303 (1)(a) and (b)* of the DoC Personnel Security Manual.

3.3 Notification of Results

The Office of Security (OSY) will conduct the required suitability checks and will provide the results (both favorable and unfavorable findings) in writing to the COTR.

! Favorable findings

Favorable findings should be forwarded to the contractor by the COTR. The COTR shall provide a copy of the written favorable designation to the contracting officer.

! Unfavorable findings

For unfavorable or questionable findings, the COTR, in coordination with the contracting officer and cognizant facility security officer, shall seek the advice of counsel in determining the appropriate course of action. The determined course of action shall reflect the duly considered opinions of the Government parties, and priority shall be given to the overall objective of protecting Government personnel and facilities.

The notification to the contractor that a given employee does not meet the suitability requirements for the contract, or that further information is needed, shall be made in writing by the Contracting Officer directly to the contractor. The notification shall especially consider the requirements of the Privacy Act and other pertinent protections of private information, and shall include the request, if applicable, that another candidate be proposed as soon as possible. Upon the advice of counsel, appropriate reference may be made to the release from liability that was submitted as part of the initial suitability determination package. Finally, a copy of the notification to the contractor shall be maintained in the contract file, although all specific information shall be retained in the cognizant facility security officer's files in accordance with the sensitivity and releasability protections afforded information of a similar nature revealed in the course of Government staff suitability assessments. In all cases, the standards applied to contractor employees shall be as nearly equal those of comparable Government employees as practicable.

Under no circumstance should the completed background investigation be released to anyone by the Contracting Officer or COTR. When the background investigation document is no longer required by the COTR, it should be destroyed by shredding.

DoC Personnel Security Manual**Chapter 2*****Position Sensitivity****203* Designation of Non-Employee Positions**

Physical security measures can be used to lower the Risk designation of positions and should be taken into consideration when Risk Level is being determined.

a. Risk levels for Nonclassified Contracts. The COTR, in conjunction with operating unit management and security officer, will review the work to be performed under contract and assign to the entire contract the highest designation in accordance with the criteria stated below. Accordingly, each contract employee will undergo suitability processing according to the contract's risks designation level (refer to subparagraph 303a). However, in instances where there is a wide variance in the risk level of the work to be performed under one contract, individual contract employees may be processed at a lower designation, commensurate with their duties, when approved by the servicing security officer. However, the contract document must specifically apply controls to ensure that the work of the lower risk positions will not overlap with that for the higher risk positions. The contract will identify the number of employees to be processed at the lower risk designation and will specify the duties of the positions. An example of such a case is custodial work where some contract employees may work unsupervised during security hours, in a building which houses classified information, and others may work under close Government supervision during normal work hours. The entire contract might be designated High or Moderate Risk due to the former case, but those contract employees whose work would be Moderate or Low Risk would be processed accordingly. The contract must meet control obligations to ensure that there is no overlap of work duties between the two groups. It is the responsibility of the COTR, in conjunction with appropriate operating unit managers and servicing or unit security officer, to determine the overall risk designation for each nonclassified contract. This is done by applying the following criteria.

(1) Contract - High Risk

- (a) work which involves continuous foreign travel of 90 days or more under the auspices of DOC;
- (b) work involved in functions or in operations of the Department that are critical to the accomplishment of the mission of the Department;
- (c) work involved in investigative, compliance, or senior level auditing duties;
- (d) work which occurs during restricted hours within

a DOC building which houses classified information or equipment, and which is not supervised by an appropriately cleared Government employee, where appropriate physical security measures are not in place to prevent unauthorized disclosure;

(e) work which involves fiduciary, public contact, or other duties involving the highest degree of public trust;

(f) ADP work involved in:

(I) planning, directing, and implementing a computer security program;

(ii) directing, planning, designing, and operating a computer system that includes ADP hardware, software, and/or data communications, regardless of the sensitivity or classification of the information stored on the system; or

(iii) access to a computer system, during the operation or maintenance process, that could result in grave damage or in personal gain (more detailed criteria may be obtained by reviewing DAO 202-731); and

(g) any other work designated High Risk by the contracting officer or by the head of the operating unit or Departmental Office.

(2) Contract - Moderate Risk.

(a) work which involves free access and movement within a DOC building which houses classified information or equipment during normal work hours with little or no supervision by an appropriately cleared Government employee;

(b) work which occurs during restricted hours within a DOC building which houses classified, or sensitive, information or equipment even though supervised by a Government employee;

(c) ADP work in which the incumbent will be responsible for the direction, planning, design, operation, or maintenance of a computer system, and whose work is technically reviewed by Government personnel processed at the Critical-Sensitive level or above to insure the integrity of the system (more detailed criteria may be obtained by reviewing DAO 202-73 1);

(d) work which requires access to sensitive information (information protected under the Privacy Act or Title 13, etc.); and

(e) work involving foreign travel less than 90 days duration.

(3) Contract - Low Risk: work which does not fall into any of the above categories and would be equivalent to a low risk designation if the individual was performing the work as an employee.

b. **Classified contracts** are handled under the auspices of the DoD's Industrial Security Program. Generally, the Department of Commerce's Personnel Security Program does not process individuals for such contracts. For guidance on classified contracts, refer to Chapter 14 of the DOC National Security Information Manual.

c. **Experts and consultants** are subject to the same security requirements as regular employees of the Department. Since experts and consultants are paid at a level equivalent to a GS-13 or above, it is advisable to consider such positions from the public trust perspective. If they are not Sensitive they should be evaluated much as an employee would be for a High, Moderate or Low Risk position.

d. **Guest workers, research associates, trainees, and other similar types of non-employees associated with the Department usually will be involved in a Low Risk capacity.** There are no specific criteria for evaluating their involvement under "position risk sensitivity" criteria; however, the determination should take into account the potential impact or damage that the non-employee's interaction could cause. If the involvement of these non-employees might fall within the generic description of a sensitive position (see paragraph 202), the manager of the granting unit involved must advise the Director of Security in accordance with paragraph 303.

**DoC Personnel Security Manual
Appendix E (modified by OAM 4/00)**

**Contract Language for Use by Contracting Officers
for High Risk Contracts**

1352.237-71 Security Processing Requirements For Contractor/Subcontractor Personnel Working on a Department of Commerce Site (High Risk Contracts)

A. Security Processing Requirement

All contractor (and subcontractor) personnel proposed to work on the premises of a Department of Commerce site under this contract must undergo security processing by the Department's Office of Security (OSY) before he or she is eligible to work on the premises of the Herbert C. Hoover (HCH) Building or other buildings used for Department operations.

B. Additional Requirements for Foreign Nationals (Non-U.S. Citizens)

Non-U.S. citizens to be employed under this contract must:

- (1) Have legal visa status with the Immigration and Naturalization Service (INS);
- (2) Have advance approval from the servicing Security Officer in consultation with the Office of Security. (The Office of Security routinely consults with appropriate agencies regarding the use of non-U.S. citizens on contracts and can provide up to date information concerning this matter.)

C. Submittal Requirements

The Contractor must complete and submit the following forms to the Contracting Officer's Technical Representative (COTR), who will review and forward them to the cognizant Security Officer:

- Standard Form 85P (SF-85P)--Questionnaire for Public Trust Positions
- Form FD-258 (Fingerprint Chart with OPM ORI number)

Upon completion of the security processing, OSY, through the Security Officer and the COTR, will notify the Contractor in writing of the individual's eligibility to be given access to the HCH Building or other DOC buildings.

Security Processing shall consist of limited personal background inquiries pertaining to verification of name, physical description, marital status, present and former residences, education, employment history, criminal record, personal references, medical fitness, fingerprint classification, and other pertinent information. It is the option of OSY to repeat the security processing on any contract employee at its discretion.

D. Notification of Disqualifying Information

If OSY receives disqualifying information on a contract employee, the Contractor, upon notification of such, must immediately remove the employee from duties which require access to DOC facilities.

Individuals may be barred from working on the premises of a facility for any of the following:

1. Conviction of a felony of a crime of violence or of a misdemeanor involving moral turpitude.
2. Falsification of information entered on security screening forms or of other documents submitted to the Department.
3. Improper conduct once performing on the contract, including criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government regardless of whether the conduct directly related to the contract.
4. Any behavior judged to pose a potential threat to departmental personnel or property.

Failure to comply with the requirements may result in termination of this contract, or removal of some contracted employees from DOC facilities. Compliance with these requirements shall not be construed as providing a contract employee clearance to have access to classified information.

**DoC Personnel Security Manual
Appendix F (modified by OAM 4/00)**

**Contract Language for Use by Contracting Officers
for Low or Moderate Risk Contracts**

1352.237-72 Security Processing for Contractor/subcontractor Personnel Working on a Department of Commerce Site (Low and Moderate Risk Contracts)

A. Security Processing Requirements

(1) U.S. Citizens Working on DoC Site

All contractor (and subcontractor) personnel proposed to work on the premises of a Department of Commerce site for 180 days or more must undergo security processing by the Department's Office of Security (OSY) to be eligible to work on the site.

(2) Foreign Nationals (Non-U.S. Citizens)

Regardless of anticipated length of on-site work, all foreign nationals to be employed under this contract must:

- (a) Have legal visa status with the Immigration and Naturalization Service (INS);
- (b) Have advance approval from the servicing Security Officer in consultation with the Office of Security.

B. Submittal Requirements – U.S. Citizens

(1) Duration of Onsite Work: 180 to 364 days (between 6 months and 1 year)

For individuals who will be performing work on a DoC site between 180 and 364 days, the Department will perform a Special Agreement Check (SAC). The scope of the SAC will include checks of the Security/Suitability Investigations Index (SII), other agency files (INVA), Defense Clearance Investigations Index (DCII), FBI Fingerprint (FBIF), and the FBI Information Management Division (FBIN)

The contractor must complete and submit the following form to the Contracting Officer's Technical Representative (COTR):

- Form FD-258 (Fingerprint Chart) .

Copies of this form can be obtained from the COTR. Upon receipt of the FD-258, the COTR will complete form OFI 86C (Special Agreement Check) and will forward both to the operating unit Security Officer. The security officer will advise the COTR whether work can commence prior to the suitability determination, based on the specifics of the situation. The COTR will notify the Contractor of an approved contract start date as well as favorable findings of the suitability determination.

(2) Duration of Onsite Work: 365 days (1 year) or more

Individuals proposed to perform work on a DoC site for 1 year (365 days) or more are required to have a NACI check (National Agency Check Plus Written Inquiries)

The contractor must complete and submit the following forms to the Contracting Officer's Technical Representative (COTR):

- Standard Form 85P (SF-85P, Questionnaire for Public Trust Positions), and
- FD-258 (Fingerprint Chart).

Copies of these forms can be obtained from the COTR. Upon receipt of the required forms, the COTR will forward the forms to the operating unit Security Officer. The security officer will advise the COTR whether work can commence prior to the suitability determination, based on the specifics of the situation. The COTR will notify the Contractor of an approved contract start date as well as favorable findings of the suitability determination.

C. Submittal Requirements – Foreign Nationals

All foreign nationals proposed to work on a DoC site will be subject to a Special Agreement Check (SAC) to determine whether the foreign national has official legal status in the United States.

The Contractor must submit the following forms to the COTR for all foreign nationals proposed to work on a DoC site must submit the following forms:

- FD-258 (Fingerprint Chart)
- Form OFI 86C (Special Agreement Check)
with signature authorization for release of information

Copies of these forms can be obtained from the COTR. Upon receipt of the required forms, the COTR will forward the forms to the operating unit Security Officer. The COTR will notify the Contractor of favorable findings and will notify the Contractor regarding an approved date to commence work under the contract.

D. Suitability Updates

Any individual (including foreign nationals) processed on the form OFI-86C (Special Agreement Check) who stays on the contract over 364 days will be required to have a NACI Complete suitability check to stay on the job site.

E. Notification of Disqualifying Information

If OSY receives disqualifying information on a contract employee, the Contractor, upon notification of such by the Contracting Officer, must immediately remove the employee from duties which require access to DOC facilities.

Individuals may be barred from working on the premises of a facility for any of the following:

1. Conviction of a felony of a crime of violence or of a misdemeanor involving moral turpitude.
2. Falsification of information entered on security screening forms or of other documents submitted to the Department.
3. Improper conduct once performing on the contract, including criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government regardless of whether the conduct directly related to the contract.
4. Any behavior judged to pose a potential threat to departmental personnel or property.

Failure to comply with the requirements may result in termination of this contract. Compliance with these requirements shall not be construed as providing a contract employee clearance to have access to classified information.